

29 October 2021

Helping Business since 1861

Mr Nicolas Aguzin
Chief Executive Officer
Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Dear Mr Aguzin,

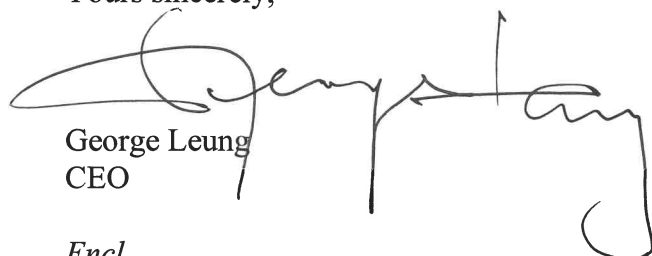
Re: HKEX Consultation Paper on Special Purpose Acquisition Companies (SPACs)

The Hong Kong General Chamber of Commerce welcomes the opportunity to express our views on the subject consultation as set out in the attached.

Although the use of SPACs has attracted considerable interest and attention of late, there are also growing concerns over the potential shortcomings associated with such a listing regime in jurisdictions such as the US, where such vehicles have had a longer history. Should the decision be made to accommodate the use of SPACs as a listing vehicle in Hong Kong, we suggest that existing listing rules be applied to the greatest extent possible.

We hope you will find our comments useful to your deliberations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'George Leung', is written over the typed name and title.

George Leung
CEO

Encl.

HKEX Consultation Paper
“Special Purpose Acquisition Companies” (September 2021)

Response by the Hong Kong General Chamber of Commerce (“HKGCC”)

1. HKGCC welcomes this opportunity to respond to the above consultation paper (“CP”). We set out first our general comments on HKEX’s proposal to introduce a listing regime for special purpose acquisition companies (“SPACs”) in Hong Kong. We then set out, to the extent possible, our responses to the specific questions in the CP.

General Comments

2. Any consultation on a new policy initiative such as this should be accompanied by a regulatory impact assessment, demonstrating that the benefits of the proposal exceed its costs. In this respect, we have two concerns:
 - 2.1. The CP lists a number of “potential benefits” of introducing a SPAC listing regime in Hong Kong,¹ but also a number of “major issues” (i.e., drawbacks) of doing so.² It is not clear from the CP that the benefits of introducing a SPAC listing regime exceed its costs. Indeed, the CP seems to indicate that the opposite may be the case.
 - 2.2. Nevertheless, the CP proposes that a SPAC listing regime be introduced in Hong Kong. It does not invite public views on whether it should be, and in particular on whether the benefits of introducing such a regime exceeds the costs.

“Potential Benefits”

3. The CP distinguishes between three categories of potential beneficiaries of a SPAC listing regime: SPAC Investors, De-SPAC Targets, and Hong Kong itself.
4. However, as far as SPAC Investors are concerned, the suggested benefits identified are in fact safeguards to protect them if a SPAC listing regime were introduced, which is a different matter.³
5. As regards potential benefits to De-SPAC Targets, the CP states that one of the “purported” benefits of listing via a SPAC is that less time is needed to execute a De-SPAC Transaction than to execute a traditional IPO transaction. Reduced execution time is stated as being important to ensure that an issuer lists at a time that is optimum to ensure its highest valuation. However, the CP questions whether this alleged benefit is actually a real one.⁴ The CP also questions the alleged benefit that the De-SPAC Target will be able to list at a more attractive price than under a traditional IPO.⁵

¹ Chapter 3.

² Chapter 4.

³ CP paras 87-94.

⁴ Paras 96-97.

⁵ Para 100.

“Major Issues”

6. The major issues (or costs) of introducing a SPAC listing regime in Hong Kong appear to be more definite than the potential benefits, according to the CP- at least in the absence of appropriate safeguards. These include concerns about shell companies, volatility of share prices, the risk of market manipulation and insider dealing, quality of management concerns, quality of market concerns, and shareholder protection concerns.⁶ This last category is perhaps the most important, given HKEX’s statutory duty to protect the interests of the investing public.⁷

Proposed Safeguards

7. The CP proposes a number of safeguards “that aim to find a suitable balance between providing the potential benefits set out in Chapter 3, while mitigating the major risks described in Chapter 4”.⁸ Perhaps the most significant one is that that the subscription and trading of SPAC securities prior to a De-SPAC Transaction should be limited to Professional Investors (as defined in the Securities and Futures Ordinance) only.
8. However, we have two concerns about this proposed safeguard:
 - 8.1. By severely limiting the number of potential investors in SPACs, it would also limit further the potential benefits of introducing a SPAC listing regime in Hong Kong, thereby tilting the benefits/costs balance towards the latter. The CP notes that, in the informal consultation which preceded its publication, most consultees thought that the population of Professional Investors in Hong Kong to whom SPACs could be marketed was relatively small.⁹
 - 8.2. If one potential benefit of introducing such a regime is to enable HKEX to compete more effectively against its US, UK and Singapore counterparts (as suggested in the CP), such a limitation would undermine this potential benefit, since we understand that these jurisdictions have no such limitation.
9. We would therefore recommend that, if a SPAC listing regime is to be introduced in Hong Kong, rather than imposing a limitation to Professional Investors only, attention should be focused on ensuring that the other proposed safeguards are sufficient and effective.

Conclusion

10. SPACS are currently a controversial topic worldwide, and particularly in the US. The CP itself notes that, after the earlier popularity of SPACs, they have recently fallen out of favour there because of increased regulatory scrutiny based on shareholder protection concerns.¹⁰

⁶ CP Chapter 4.

⁷ Securities and Futures Ordinance s21(2).

⁸ CP para 140.

⁹ Para 147.

¹⁰ CP paras 57-63.

11. At the same time, a SPAC listing regime has recently been introduced in Singapore, and the UK regime has recently been refined.¹¹
12. Rather than introducing a SPAC listing regime at this time, we would recommend that it would be more prudent to observe how the current controversy surrounding SPACs resolves itself, and any lessons that can be learnt from the recent regulatory changes in the UK and Singapore, before deciding whether to introduce a SPAC listing regime in Hong Kong. This is especially the case since the possible benefits of such a regime do not appear compellingly to outweigh the costs, and there is no pressing demand for the introduction of such a regime.
13. However, assuming that HKEX nevertheless decides to introduce a SPAC listing regime in Hong Kong at this time, we set out below our responses to those specific questions that we are able to answer.¹²

Answers to Consultation Questions

Question 1: Do you agree that the subscription and trading of SPAC securities prior to a De-SPAC Transaction should be limited to Professional Investors only (see paragraph 149 of the Consultation Paper)? Please give reasons for your views.

14. We do not agree that the subscription for and trading of a SPAC's securities should be restricted to professional investors only. For the reasons, please see our general comments above under *Proposed Safeguards* above.

Question 2: If your answer to Question 1 is "Yes", do you agree with the measures proposed in paragraphs 151 to 159 of the Consultation Paper to ensure SPAC's securities are not marketed to and traded by the public in Hong Kong (excluding Professional Investors)? Please give reasons for your views.

15. As our answer to Question 1 is "no", this question is not applicable to us.

Question 5: Do you agree that, at its initial offering, a SPAC must distribute each of SPAC Shares and SPAC Warrants to a minimum of 75 Professional Investors in total (of either type) of which 30 must be Institutional Professional Investors? Please give reasons for your views.

16. As our answer to Question 1 is "no", this question is not applicable to us.

Question 6: Do you agree that, at its initial offering, a SPAC must distribute at least 75% of each SPAC Shares and SPAC Warrants to Institutional Professional Investors? Please give reasons for your views.

17. As our answer to Question 1 is "no", this question is not applicable to us.

¹¹ Paras 64-68.

¹² Many of the questions in the CP are of a very specialist nature which securities professionals are better-placed than us to answer: we focus on those of more interest from a general business perspective.

Question 12: Do you agree that the funds expected to be raised by a SPAC from its initial offering must be at least HK\$1 billion? Please give reasons for your views.

18. We disagree with this proposal. We believe that the market capitalisation requirement should be HK\$500 million, which is consistent with Chapter 8 of the HKEX Listing Rules. This would make SPACs more likely to be available as a listing route for businesses which would meet the HKEX Listing Rules requirements for an IPO.

Question 16: Do you agree that the Exchange must be satisfied as to the character, experience and integrity of a SPAC Promoter and that each SPAC Promoter should be capable of meeting a standard of competence commensurate with their position? Please give reasons for your views.

19. We disagree with this proposal. The proposed suitability and eligibility requirements of a SPAC Promoter are likely to mean that only large investment banks will qualify to be SPAC Promoters, thereby excluding a large number of potential candidates.
20. Objective criteria should be used to assess the eligibility of a SPAC Promoter. The IPO Sponsor regime addresses the concerns in relation to Promoters' suitability and experience and provides adequate safeguards to investors. In any event, provided that there is adequate disclosure in the Listing Document of the SPAC in respect of the experience and reputation of the Promoter, SPAC Investors will have an opportunity based on these disclosures to decide whether or not they want to invest in the SPAC.

Question 17: Do you agree that the Exchange should publish guidance setting out the information that a SPAC should provide to the Exchange on each of its SPAC Promoter's character, experience and integrity (and disclose this information in the Listing Document it publishes for its initial offering), including the information set out in Box 1 of the Consultation Paper, or is there additional information that should be provided or information that should not be required regarding each SPAC Promoter's character, experience and integrity? Please give reasons for your views.

21. As noted in our answer to Question 16 above, we have no objection to reasonable disclosure requirements in the Listing Document of the SPAC.

Question 18: Do you agree that the Exchange, for the purpose of determining the suitability of a SPAC Promoter, should view favourably those that meet the criteria set out in paragraph 216 of the Consultation Paper?

22. Please see our answer to Question 16 above.

Question 19: Do you agree that at least one SPAC Promoter must be a firm that holds: (i) a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) license issued by the SFC; and (ii) at least 10% of the Promoter Shares?

23. We believe that this proposed licence requirement is unnecessary. The Consultation Paper already proposes adequate safeguards (not least the IPO Sponsor Regime) to protect SPAC Investors and to ensure an orderly market. In the U.S, the UK and Singapore, we understand that there is no requirement that SPAC Promoters or SPAC Directors have specific qualifications or licences.
24. Nor do we believe that it is necessary that a SPAC Promoter be required to hold at least 10 per cent of the Promoter Shares. The interests of the Promoter and the SPAC investors would be more appropriately aligned where a suitable De-SPAC target has been identified.

Question 20: Do you agree that, in the event of a material change in the SPAC Promoter or the suitability and/or eligibility of a SPAC Promoter, such a material change must be approved by a special resolution of shareholders at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) and if it fails to obtain the requisite shareholder approval within one month of the material change, the trading of a SPAC's securities will be suspended and the SPAC must return the funds it raised from its initial offering to its shareholders, liquidate and de-list (in accordance with the process set out in paragraphs 435 and 436 of the Consultation Paper)? Please give reasons for your views.

25. We disagree with this proposal. The criteria for suitability and/or eligibility, and what constitutes a "material change", are too subjective to be suitable for a shareholders' resolution.

Question 39: Do you prefer that the Exchange impose a cap on the maximum dilution possible from the conversion of Promoter Shares or exercise of warrants issued by a SPAC? Please give reasons for your views.

26. We do not agree that a cap should be imposed. In the U.S. there is no cap on the dilution to the value of a SPAC Investor's shareholding resulting from the conversion of the Promoter Shares and the exercise of SPAC Warrants and Promoter Warrants. In the UK, the SPAC must disclose the dilution effects on ordinary shareholders potentially arising from the De-SPAC Transaction to allow SPAC investors to make an informed decision. In Singapore, the SGX imposes a dilution cap of no more than 50 per cent on the SPAC post-invitation issued share capital with respect to the conversion of warrants issued at IPO. The limit and dilutive effect must be disclosed.

27. We are of the view that the dilution effects should be disclosed, as in the UK.

Question 40: If your answer to Question 39 is "Yes", do you agree with the anti-dilution mechanisms proposed in paragraph 311 of the Consultation Paper? Please give reasons for your views and provide any suggestions for alternative dilution cap mechanisms that could be considered.

28. As our answer to question 39 is "no", this question is not applicable to us.

Question 41: If your answer to Question 39 is "Yes", do you agree that the Exchange should be willing to accept requests from a SPAC to issue additional Promoter Shares if the conditions set out in paragraph 312 are met? Please give reasons for your views.

29. As our answer to question 39 is “no”, this question is not applicable to us.

Question 30: Do you agree that the Exchange should apply new listing requirements to a De-SPAC Transaction as set out in paragraphs 259 to 281 of the Consultation Paper? Please give reasons for your views.

30. Insofar as possible, the current HKEX Listing Rules should apply equally to SPACs, including the requirements under Chapter 8 of the HKEX Listing Rules. Any new requirements should be kept to a minimum.

Question 35: Do you agree that the Exchange should mandate that a SPAC obtain funds from outside independent PIPE investors for the purpose of completing a De-SPAC Transaction? Please give reasons for your views.

31. We do not agree with this proposal. We do not believe that it is necessary to mandate independent PIPE investment from third parties. This should be a market-driven process.

Question 36: If your answer to Question 35 is “Yes”, do you agree that the Exchange should mandate that this outside independent PIPE investment must constitute at least 25% of the expected market capitalisation of the Successor Company, with a lower percentage of between 15% and 25% being acceptable if the Successor Company is expected to have a market capitalisation at listing of over HK\$1.5 billion? Please give reasons for your views.

32. As our answer to Question 35 is “no”, this question is not applicable to us.

Question 37: If your answer to Question 35 is “Yes”, do you agree that at least one independent PIPE investor in a De-SPAC Transaction must be an asset management firm with assets under management of at least HK\$1 billion and that its investment must result in it beneficially owning at least 5% of the issued shares of the Successor Company as at the date of the Successor Company’s listing? Please give reasons for your views.

33. As our answer to Question 35 is “no”, this question is not applicable to us.

Question 38: If your answer to Question 35 is “Yes”, do you agree with the application of IFA requirements to determine the independence of outside PIPE investors? Please give reasons for your views.

34. As our answer to Question 35 is “no”, this question is not applicable to us.

Question 43: Do you agree that a De-SPAC Transaction must be made conditional on approval by the SPAC’s shareholders at a general meeting as set out in paragraph 320 of the Consultation Paper? Please give reasons for your views.

35. Yes. As mentioned above, we believe that the current HKEX Listing Rules should be applied equally to SPACs insofar as possible. Therefore, we agree with this proposal, as it is consistent with the notifiable transaction regime (and connected transactions regime) under the HKEX Listing Rules.

Question 44: If your answer to Question 43 is “Yes”, do you agree that a shareholder and its close associates must abstain from voting at the relevant general meeting on the relevant resolution(s) to approve a De-SPAC Transaction if such a shareholder has a material interest in the transaction as set out in paragraph 321 of the Consultation Paper? Please give reasons for your views.

36. We agree with this proposal, as a shareholder and its close associates would have a clear conflict of interest in this situation.

Question 45: If your answer to Question 43 is “Yes”, do you agree that the terms of any outside investment obtained for the purpose of completing a De-SPAC Transaction must be included in the relevant resolution(s) that are the subject of the shareholders vote at the general meeting? Please give reasons for your views.

37. We agree with this proposal, as it is appropriate that the terms of any such outside investment should be put to a shareholder’s vote.

Question 46: Do you agree that the Exchange should apply its connected transaction Rules (including the additional requirements set out in paragraph 334) to De-SPAC Transactions involving targets connected to the SPAC; the SPAC Promoter; the SPAC’s trustee/custodian; any of the SPAC directors; or an associate of any of these parties as set out in paragraphs 327 to 334 of the Consultation Paper? Please give reasons for your views.

38. We agree with this proposal. There is no reason in principle why De-SPAC transactions should be treated differently from other transactions in terms of the connected transaction rules.

Question 48: Do you agree a SPAC should be required to provide holders of its shares with the opportunity to elect to redeem all or part of the shares they hold (for full compensation of the price at which such shares were issued at the SPAC’s initial offering plus accrued interest) in the three scenarios set out in paragraph 352 of the Consultation Paper? Please give reasons for your views.

39. We agree that these trigger events are appropriate, for the reasons stated in the CP.

Question 49: Do you agree a SPAC should be prohibited from limiting the amount of shares a SPAC shareholder (alone or together with their close associates) may redeem? Please give reasons for your views.

40. We agree with this proposal. As a matter of principle, SPAC shareholders should be able to redeem their shares in full in this scenario.

Question 61: Do you agree that the Exchange should set a time limit of 24 months for the publication of a De-SPAC Announcement and 36 months for the completion of a De-SPAC Transaction (see paragraph 423 of the Consultation Paper)? Please give reasons for your views.

41. We agree with the proposals in respect of the timelines. However, requiring 100 per cent of the gross proceeds from the IPO to be ring-fenced may be too restrictive, and a lower threshold should be considered. A lower threshold would allow a portion of the funds raised from the IPO to be used to cover expenses and operating costs of the SPAC. In the U.S. and Singapore,

90 per cent of the Gross Proceeds need to be held in trust. In the UK, the FCA does not propose to specify a minimum percentage of SPAC IPO proceeds to be held in trust. The SPAC may retain funds to cover its operations, provided the specified amount is disclosed in the SPAC prospectus.

Question 62: Do you agree that the Exchange should suspend a SPAC's listing if it fails to meet either the De-SPAC Announcement Deadline or the De-SPAC Transaction Deadline (see paragraphs 424 and 425 of the Consultation Paper)? Please give reasons for your views.

42. We agree with this proposal. To enforce the timelines referred to in Question 61 above, suspension of a SPAC's listing if it fails to meet these timelines seems to be a reasonable and proportionate response.

Question 63: Do you agree that a SPAC should be able to make a request to the Exchange for an extension of either a De-SPAC Announcement Deadline or a De-SPAC Transaction Deadline if it has obtained the approval of its shareholders for the extension at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) (see paragraphs 426 and 427 of the Consultation Paper)? Please give reasons for your views.

43. We agree with this proposal. We do not see any reasonable objection to a request for such an extension, provided that the requisite majority shareholders' vote has been obtained.

Question 64: Do you agree that, if a SPAC fails to (a) announce / complete a De-SPAC Transaction within the applicable deadlines (including any extensions granted to those deadlines) (see paragraphs 423 to 428 of the Consultation Paper); or (b) obtain the requisite shareholder approval for a material change in SPAC Promoters (see paragraphs 218 and 219) within one month of the material change, the Exchange will suspend the trading of a SPAC's shares and the SPAC must, within one month of such suspension return to its shareholders (excluding holders of the Promoter Shares) 100% of the funds it raised from its initial offering, on a pro rata basis, plus accrued interest? Please give reasons for your views.

44. We agree with this proposal in respect of (a). However, in respect of (b), as noted in our answer to Question 20 above, we believe that criteria for what constitutes a "material change" in SPAC Promoters are too subjective to be suitable for a shareholders' resolution.

Question 65: If your answer to Question 64 is "Yes", do you agree that (a) a SPAC must liquidate after returning its funds to its shareholders and (b) the Exchange should automatically cancel the listing of a SPAC upon completion of its liquidation? Please give reasons for your views.

45. We believe that the SPAC can be de-listed prior to its liquidation. We do not think that it is necessary that the SPAC must be liquidated before it is de-listed.

HKGCC Secretariat
October 2021